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DEC 26 1991

DEPT. OF ECOLOGY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JOANNE ELISE ERICKSON
and GARY E. ERICKSON,

Defendants.

NO.

CONSENT DECREE

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	2
II. JURISDICTION	2
III. PARTIES BOUND.....	4
IV. DEFINITIONS	4
V. STATEMENT OF FACTS.....	5
VI. WORK TO BE PERFORMED.....	6
VII. DESIGNATED PROJECT COORDINATOR.....	8
VIII. REIMBURSEMENT OF ECOLOGY'S COSTS.....	8
IX. ACCESS.....	9
X. TRANSFERENCE OF PROPERTY.....	9
XI. DISPUTE RESOLUTION.....	10
XII. AMENDMENT OF CONSENT DECREE.....	11
XIII. INDEMNIFICATION.....	11
XIV. PUBLIC NOTICE AND PARTICIPATION.....	11
XV. SATISFACTION OF THIS DECREE.....	12
XVI. EFFECTIVE DATE.....	12
XVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT..	12

CONSENT DECREE

-1-

12/24/91

OFFICE OF THE ATTORNEY GENERAL

Ecology Division

4407 Woodview Drive S.E.

QA-44

Olympia, WA 98504-8077

1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology) and Joanne and Gary Erickson (Defendants), is to
5 remediate a release or threatened release of hazardous
6 substances at the Hansville General Store site.

7 B. The complaint in this action is being filed
8 simultaneously with this Decree. An answer has not been
9 filed, and there has not been a trial on any issue of fact or
10 law in this case. The parties wish to resolve the issues
11 raised by Ecology's complaint and agree that settlement of
12 these matters without litigation is reasonable and in the
13 public interest and that entry of this Decree is the most
14 appropriate means of resolving these matters.

15 C. In signing this Decree, the Defendants agree to its
16 entry and agree to be bound by its terms.

17 D. The court is fully advised of the reasons for entry
18 of this Decree, and good cause having been shown: IT IS
19 HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

20 II. JURISDICTION

21 A. This court has jurisdiction over the subject matter
22 and personal jurisdiction over the parties pursuant to the
23 Model Toxics Control Act (ch. 70.105D RCW).
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1 B. Ecology has authority pursuant to RCW 70.105D.040(4)
2 to file this Consent Decree with the appropriate superior
3 court after appropriate public notice and comment.

4 C. On the basis of the testing and analysis described
5 in the Statement of Facts, Section V, and Ecology files and
6 records, Ecology has determined that a release of hazardous
7 substances has occurred at the site.

8 D. Ecology has determined that the Defendants are
9 potentially liable persons for the site pursuant to RCW
10 70.105D.040. The Defendants have been given notice of
11 Ecology's determination, and have had opportunity to comment
12 thereon.

13 E. The Defendants have applied to Ecology for financial
14 assistance under WAC 173-340-560. Based on the Defendants'
15 application, Ecology has determined the Defendants are
16 eligible for funding. Ecology has also determined that making
17 available funding under the circumstances described in
18 Section VIII of this Decree will achieve a more expeditious or
19 enhanced cleanup than would otherwise occur and will prevent
20 or mitigate unfair economic hardship.

21 F. Entering this Decree will result in a more
22 expeditious cleanup of the site and is appropriate given the
23 use of funding at the site.

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CONSENT DECREE

-3-

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1 G. The actions to be taken pursuant to this Decree are
2 necessary to protect the public health, welfare and the
3 environment.

4 III. PARTIES BOUND

5 This Decree shall apply to and be binding upon Joanne and
6 Gary Erickson and Ecology and their successors and assigns.
7 The undersigned representative of each party hereby certifies
8 that he/she is fully authorized to enter into this Decree and
9 to execute and legally bind such party to comply with the
10 Decree. The parties agree to undertake all actions required
11 by the terms and conditions of this Decree and the Defendants
12 agree not to contest state jurisdiction regarding this Decree.
13 No change in ownership or corporate status shall alter the
14 responsibility of the Defendants under this Decree.

15 IV. DEFINITIONS

16 A. "Site" refers to the property and business known as
17 "the Hansville General Store" located at 7532 N.E. Twin Spits
18 Road, Hansville, Washington 98340.

19 B. "Remedial action" refers to the work performed by
20 Ecology to clean up the site.

21 C. "Remedial action costs" refer to those direct and
22 indirect costs incurred by Ecology under this Consent Decree.
23 Such costs include work performed by Ecology or its
24 contractors for investigations, remedial actions, and order
25 preparation, negotiations, oversight, and administration.

1 Ecology costs shall also include costs of direct activities;
2 e.g., employee salary, laboratory costs, travel costs,
3 contractor fees, and employee benefit packages; and agency
4 indirect costs of direct activities.

5 D. "Days" refers to calendar days unless specified
6 otherwise.

7 E. "Parties" refers to the Department of Ecology and
8 Joanne and Gary Erickson.

9 F. The definitions set forth in ch. 70.105D RCW and
10 ch. 173-340 WAC shall control the meanings of the terms used
11 in this Decree.

12 V. STATEMENT OF FACTS

13 Ecology makes the following findings of fact:

14 A. Site Location and Status

15 The Hansville General Store is located at 7532 N.E. Twin
16 Spits Road, Hansville, Washington 98340. It is currently an
17 operating grocery store and deli. There are currently no
18 operating fueling facilities. There may be at least one tank
19 remaining in the ground.

20 B. Facility History and Operations

21 Prior to 1934, the facility was operated as a farmer's
22 cooperative store. Between 1934 and 1988, the facility
23 operated as a general store, including a lunch counter and a
24 gas pump. In December 1988, the facility ceased pumping gas,
25 but continued to operate as a store and lunch deli.

1 C. Previous Site Investigations

2 An adjacent site, formerly Forbes Landing, now known as
3 Captains Landing, underwent an independent cleanup in 1990.
4 During this cleanup, contamination was discovered indicating
5 that releases from tanks on the Hansville General Store
6 property had occurred. This information is documented and
7 available in the site investigation report, including the
8 Parametrix Report "Preliminary Soil and Groundwater
9 Assessment," September 1990; and Parametrix Report
10 "Groundwater Investigation," November 1990. Information is
11 also available in Ecology's Captain's Landing LUST file.

12 VI. WORK TO BE PERFORMED

13 Scope of Work

14 The Department of Ecology (Ecology) shall direct the
15 remedial action at the site according to the following scope
16 of work:

17 1. Ecology shall conduct an interim action which
18 includes the removal and proper disposal of all leaking and
19 suspected leaking underground storage tanks at the site as
20 well as any tanks which must be removed to facilitate
21 remediation at the site (the Defendants shall be responsible
22 for closure, if necessary, of any other underground storage
23 tanks at the site according to all relevant and applicable
24 federal, state and local regulations), and the excavation of
25 all the soils in excess of soil cleanup levels established

1 under WAC 173-340-720 that it is practical to excavate at the
2 time of tank removal. The practical limits of soil excavation
3 during tank removal will be determined by the Ecology Project
4 Manager.

5 2. Ecology shall conduct a remedial investigation of
6 soil and groundwater to assess the potential for on- and off-
7 site environmental and human health impacts of identified
8 contamination, and to enable Ecology to prepare a Cleanup
9 Action Plan. A feasibility study will be required if
10 conditions outlined in WAC 173-340-450(5) are present.

11 3. Ecology shall develop a Cleanup Action Plan as soon
12 as possible after the remedial investigation and, if
13 necessary, the feasibility study have been completed.

14 4. Ecology shall ensure the Cleanup Action Plan is or
15 has been properly implemented. The Cleanup Action Plan may
16 require further excavation of contaminated soils or an
17 alternative treatment technology such as a vapor extraction
18 system, or a combination thereof. The extent of excavation
19 shall be the limits of contamination, or such other limits as
20 determined by Ecology in accordance with ch. 173-340 WAC.
21 Ecology shall coordinate treatment of the excavated soils.
22 On- or off-site treatment of the soils may prove
23 impracticable, and Ecology shall then coordinate proper
24 disposal of the soil. Alternative treatment technology may be
25 employed if that technology is determined to be the most

1 suitable for the situation, in the professional judgment of
2 the designated project coordinator (see Part VII of this
3 document). Cleanup shall continue until cleanup standards in
4 accordance with ch. 173-340 WAC Part VII are achieved.

5 5. Ecology shall ensure that all observations,
6 conditions, and results are documented in a final report with
7 at least four copies, one for the property owner and three for
8 the Ecology site inspector.

9 VII. DESIGNATED PROJECT COORDINATOR

10 The project coordinator for Ecology is:

11 Joe Hickey (206) 649-7202
12 Department of Ecology
13 Northwest Regional Office
3190 - 160th Avenue S.E.
Bellevue, WA 98008-5452

14 The project coordinator shall be responsible for overseeing
15 the implementation of this Decree. To the maximum extent
16 possible, communications between Ecology and the Defendants,
17 and all documents, including reports, approvals, and other
18 correspondence concerning the activities performed pursuant to
19 the terms and conditions of this Decree, shall be directed
20 through the project coordinator. Should Ecology change
21 project coordinator, written notification shall be provided by
22 Ecology at least ten (10) calendar days prior to the change.

23 VIII. REIMBURSEMENT OF ECOLOGY'S COSTS

24 1. Ecology has determined that the Defendants are
25 eligible for full funding. Consequently, the Defendants'

1 obligation to reimburse Ecology for its remedial action costs
2 will be satisfied by use of funds from the toxics control
3 account.

4 2. Ecology's determination regarding full funding
5 applies only to the Defendants and is not transferable. In
6 the event the Defendants sell, assign, or otherwise transfer
7 any or all interest in the Site while this Decree is in
8 effect, the new owner will, in all likelihood, be liable for
9 Ecology's remedial action costs incurred at the Site.

10 3. Ecology's determination that Defendants are eligible
11 for funding is not a funding commitment. Actual funding will
12 depend upon the availability of funds.

13 IX. ACCESS

14 Ecology or any Ecology authorized representative or
15 contractor hired by Ecology, shall have the authority to enter
16 and freely move about the site at all reasonable times for the
17 purposes of performing, or monitoring the performance of,
18 remedial action at the site.

19 X. TRANSFERENCE OF PROPERTY

20 A. No voluntary conveyance or relinquishment of
21 Defendants' title, easement, leasehold, or other interest in
22 any portion of the site shall be consummated without provision
23 for continued performance of all of Defendants' obligations
24 under this Decree. If an involuntary conveyance or
25 relinquishment of such interest occurs, the Defendants shall,

1 if possible, give prior written notice of this Decree to the
2 transferee.

3 B. Within 90 days of entry of this Decree, the
4 Defendants shall record a notice in the title records to that
5 portion of the property underlying the site over which
6 Defendants hold fee title. The notice shall state that a
7 Consent Decree entered in the above-captioned proceeding
8 imposes certain restrictions on the use and improvement of the
9 site, and that said restrictions run with the land until all
10 remedial actions have been successfully carried out and
11 cleanup levels achieved. Within 30 days of filing the notice
12 with the Kitsap County Auditor, the Defendants shall forward a
13 copy of the notice to Ecology.

14 XI. DISPUTE RESOLUTION

15 The Defendants may request Ecology to resolve disputes
16 which may arise during the implementation of this Consent
17 Decree. Such request shall be in writing and directed to the
18 Ecology Project Coordinator. Ecology resolution of the
19 dispute shall be binding and final. The Defendants are not
20 relieved of any requirement of this Consent Decree during the
21 pendency of the dispute and remain responsible for timely
22 compliance with the terms of the Consent Decree unless
23 otherwise provided by Ecology in writing.

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1 XII. AMENDMENT OF CONSENT DECREE

2 Any Amendment to this Decree must be in writing and
3 signed by the parties. Such amendment shall become effective
4 when entered by the court. If the amendments to the Decree
5 are substantial, Ecology will provide additional public notice
6 and opportunity for public comment.

7 XIII. INDEMNIFICATION

8 The Defendants agree to indemnify and save and hold the
9 State of Washington, its employees, and agents harmless from
10 any and all claims or causes of action for death or injuries
11 to persons or for loss or damage to property arising from or
12 on account of acts or omissions of the Defendants, their
13 officers, employees, agents, or contractors in entering into
14 and implementing this Decree; provided, however, that the
15 Defendants shall not indemnify the State of Washington nor
16 save nor hold its employees and agents harmless from any
17 claims or causes of action brought by third parties arising
18 out of the negligent acts or omissions of the State of
19 Washington, or the employees or agents of the state, in
20 implementing the activities pursuant to this Decree.

21 XIV. PUBLIC NOTICE AND PARTICIPATION

22 Ecology shall be the lead for public notice and
23 participation at the site. Ecology shall allow the Defendants
24 to review fact sheets, press releases, and public notices
25 prior to issuance.

1 XV. SATISFACTION OF THIS DECREE

2 The provisions of this Decree shall be deemed satisfied
3 upon written notification from Ecology to the Defendants that
4 remedial action is complete.

5 XVI. EFFECTIVE DATE

6 This Decree is effective upon the date it is entered by
7 the court.

8 XVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

9 This Decree will be subject to public notice and comment
10 under RCW 70.105D.040(4)(a). Ecology reserves the right to
11 withdraw or withhold its consent to the proposed final Decree
12 should the comments received by Ecology disclose facts or
13 considerations which indicate that the proposed Decree is
14 inappropriate, improper, or inadequate.

15 If the court withholds or withdraws its consent, this
16 Decree shall be null and void at the option of any party and
17 the accompanying complaint shall be dismissed without cause
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1 and without prejudice. In such an event, no party shall be
2 bound by the requirements of this Decree. It is so agreed
3 this 23 day of June, 1991-1992

4
5 Carol L. Fleskes
6 CAROL FLESKES, PROGRAM MANAGER
7 TOXICS CLEANUP PROGRAM
8 WASHINGTON STATE
9 DEPARTMENT OF ECOLOGY

10
11 Gary E. Erickson
12 GARY E. ERICKSON

13
14 Mary Sue Wilson
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16 Assistant Attorney General
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20
21 Joanne Elise Erickson
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26 CONSENT DECREE

-13-

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